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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/902,035	07/10/2001	Timothy David Forrester	42252-1009	7784

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EXAMINER

TRINH, TAN H

ART UNIT	PAPER NUMBER
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2684

10

DATE MAILED: 10/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/902,035

Applicant(s)

FORRESTER, TIMOTHY DAVID

Examiner

TAN TRINH

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 26 and 27 is/are allowed.
- 6) ☒ Claim(s) 28-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date g.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed On 3-31-2004 has been received and placed of record in the file.

Reasons for allowance

2. The following is an examiner's statement of reasons for allowance:

Regarding independent claims 26 and 27 are allowed with the same reasons set forth in the previous Office action (paper # 7).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 28-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Irvin (U.S. Patent No. 6,021,317) in view of Todd (U.S. Patent No. 6,002,672).

Regarding claims 28 and 34, Irvin teaches a mobile communications device (see fig. 1), comprising: a first antenna (see fig. 1, antenna 22); a second antenna (see fig. 1, antenna 24); a transmitter (see fig. 1, transmitter 12); a receiver (see fig. 1, receivers 15); a switching module (see fig. 1, switching module 30); comprising: a first switch capable of switchably connecting the transmitter to either the first antenna or the second antenna; (see fig. 3, switching module 30 with switches 41 and 43, col. 3, lines 55-65), and a second switch capable of

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switchably connecting the receiver to either the first antenna or the second antenna (see switching module 30 with switches 42 and 44, col. 3, lines 55-65); and a controller connected to the switching module to selectively connect the receiver to one of the first and second antennas (see fig. 1, controller 50) based upon signal-to-noise ratio of a signal received from one of the first and second antennas (see col. 7, lines 45-59). But Irvin fails to teach a bit error rate of a signal received from one of the first and second antennas.

However, Todd teaches a bit error rate of a signal received from one of the first and second antennas (see fig. 1, RF switch 35 and receiver 50, col. 5, lines 34-42 and col. 6, lines 52-65).

Therefore, it would have been obvious to one of the ordinary skill in the art at the time invention was made to modify the Irvin system and by providing of the teaching of Todd on the BER measured thereto in order to provided the level of the BER of the signal to determine the antennas selection (see col. 6, lines 52-61).

Regarding claim 29, Irvin teaches wherein the controller is connected to the switching module to selectively connect the transmitter to one of the first and second antennas based upon a transmission characteristic of one of the first and second antennas (see fig. 1, controller 50 and switching module 30, col. 3, lines 55-65, and col. 7, lines 53-59, and col. 8, lines 6-29).

Regarding claims 30 and 37, Todd teaches wherein the transmission characteristic comprises signal strength relative to a predetermined signal strength threshold (see col. 1, lines 25-43, col. 8, lines 26-38, and col. 9, lines 10-22).

Regarding claims 31 and 38, Irvin teaches wherein the transmission characteristic is detected by a base station and transmitted to the controller via one of the first and second antennas (see fig. 1, controller 50 and abstract lines 14-16). (Since during the communication the mobile to base station the transmission characteristic is detected by a base station that is well known in the art).

Regarding claims 32 and 39, Irvin teaches wherein the first and second antennas are disposed at an angle with respect to each other (see col. 6, line 58-col. 7, line 2).

Regarding claims 33 and 40, Irvin teaches wherein the first and second antennas are disposed orthogonally with respect to each other (see col. 6, line 58-col. 7, line 2, the antennas 22 and 24 are disposed orthogonally vary by 80 degree or more).

Regarding claims 35 and 36, Todd teaches for comparing the bit error rate of the second signal received from the first antenna to that of the second signal received from the second antenna (see figs. 4A-D, col. 4, line 53-col. 5, line 62 and col. 6, line 53-col. 7, line 60).

Response to Arguments

5. Applicant's arguments with respect to claims 28-40 have been considered but are moot in view of the new ground(s) of rejection.

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Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Yoshiyuki (GB 2358769A) discloses communication apparatus.

8. **Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 872-9314, (for Technology Center 2600 only)

*Hand-delivered responses should be brought to Crystal Park II,
2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).*

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tan Trinh whose telephone number is (703) 305-5622. The examiner can normally be reached on Monday-Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nay Maung, can be reached at (703) 308-7745.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Technology Center 2600 Customer Service Office** whose telephone number is **(703) 306-0377**.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tan H. Trinh
Art Unit 2684
September 27, 2004


NICK CORSARO
PRIMARY EXAMINER